ADVISORY OPINION 2000-005

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

June 14, 2000

Hon. William T. Warner
1265 Bassett Ave.
Louisville, Kentucky 40204

Dear Mr. Warner:

This is in reference to your May 12, 2000 letter requesting an advisory opinion regarding the application of Kentucky campaign finance law to political issues committees. You indicate that you are requesting the opinion on behalf of CO$T, a registered political issues committee. You ask the Registry to respond the following specific questions:

ISSUE 1. (a) Whether or not a candidate's committee may contribute to an issues committee, and (b) whether or not an issues committee may contribute to a candidate's committee.

KRS 121.175(1) provides:

> No candidate, committee, or contributing organization shall permit funds in a campaign account to be expended for any purpose other than for allowable campaign expenditures. "Allowable campaign expenditures" mean expenditures

> including reimbursement for actual expenses, made directly and primarily in support of or opposition to a candidate, constitutional amendment, or public question which will appear on the ballot... (Emphasis added.)

The term "committee" as defined by KRS 121.015(3) includes both a campaign committee and a political issues committee. Therefore, KRS 121.175(1) would prohibit either a candidate's campaign committee or a political issues committee from expending funds except for the purpose of either supporting or opposing a candidate or for the purpose of supporting or opposing an issue on the ballot.

In addition to the "allowable campaign expenditures" provision of KRS 121.175(1), both candidates and political issues committees are prohibited from using funds for other candidates or other issues. KRS 121.180(10) provides that

> No candidate, slate of candidates, campaign committee, political issues committee, or contributing organization shall use or permit the use of contributions or funds solicited or received for the person or in support of or opposition to a public issue which will appear on the ballot to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office..."

The legislative intent that is apparent from these statutes is that contributions raised for a particular campaign or ballot issue must be utilized for that purpose.

Although you state that "there is simply no demonstrable state interest in restricting contributions in either direction, from a candidate to an issues committee, or from an issues committee to a candidate," the provisions cited above do not unreasonably restrict contributions either practically or pursuant to constitutional case precedent. There is nothing to prohibit a candidate from contributing to an issues committee using personal funds. Similarly, there is nothing to prohibit persons from contributing both to a candidate and to an issues committee. Rather, what is prohibited is a contribution to a political issues committee, which may be unlimited and may come directly from a corporation, from being passed to candidates, who are restricted to a limit of $1,000 per person and may not accept corporate funds.

Constitutional cases support such a restriction. "A State indisputably has a compelling interest in preserving the integrity of its election process." Eu v. San Francisco Democratic Committee, 489 U.S. 214, 231 (1989). For example, in Kentucky Right to Life, Inc. v. Terry, 108 F.3d 637 (6th Cir. 1997), the United States Court of Appeals for the Sixth Circuit upheld Kentucky's limit on aggregate contributions to

permanent committees, characterizing such speech as "speech by proxy" and stating that it furthered Kentucky's statutory scheme by preventing evasion of the individual contribution limit. Id. at 648-649. The court explained:

> Absent this aggregate limit, unscrupulous individuals could pass unlimited amounts of cash to permanent committees with the understanding that those funds would be disbursed directly to specific candidates. See Buckley, 424 U.S. at 38, 96 S.Ct. at 644 (noting the possibility of evasion in upholding similar $25,000 limitation in the context of federal elections). In that sense, the limitation is integral to the effectiveness of the overall statutory scheme of combatting corruption in the political process. Id. at 649.

In a more recent case, the Sixth Circuit continued this logic, holding that a state's limitation on transfers of contributions between judicial campaigns was narrowly tailored to the state's interest in avoiding corruption or its appearance. Suster v. Marshall, 149 F.3d 523 (6th Cir. 1998), cert. denied 525 U.S. 1114 (1999); but cf. Services Employees Int'l Union v. Fair Political Practices Comm'n, 955 F.2d 1312, 1315 (9th Cir. 1992)(holding that a state prohibition on inter-candidate transfers of funds was unconstitutional as not sufficiently related to the proffered state interest in preventing funds from being used for another purpose without a contributor's knowledge) and Shrink Missouri Gov't Political Action Comm v. Maupin, 71 F.3d 1422, 1427-28 (8th Cir. 1995)(invalidating "spend down" provision prohibiting candidates from carrying contributions forward as unconstitutional).

In Suster, the Sixth Circuit held that the prohibition on transferring funds from one judicial campaign to the next campaign resulted in the prevention of corruptive influences such as "using funds which may potentially be 'ideas-bought' funds, or funds which came attached to a candidate's agreement to advance or take on some political issue or cause." Id. Similarly, KRS 121.175(1) and KRS 121.180(10), as applied to transfers between candidates and political issues committees, prevent corporate funds or unlimited individual funds from being passed through a political issues committee to a candidate; the prohibition is narrowly tailored to the state's interest in avoiding corruption or its appearance and furthers Kentucky's overall statutory scheme.

Therefore, under KRS 121.175(1) and KRS 121.180(10), a political issues committee may not contribute to a candidate and a candidate may not contribute to a political issues committee using campaign funds.

ISSUE 2. Whether or not, in view of the invalidation of statutory limits on contributions to issues committees pursuant to KREF AO 1998-011, as well as other provisions of underlying case law, it is necessary for issues committees to report

certain categories of information under KRS 121.180(3)(a) 3., specifically the employer and occupation of each contributor, and the total amount contributed to each contributor during the election cycle.

KRS 121.180(3)(a) 3. requires the following information to be reported:

> [f]or each contribution in excess of one hundred dollars ($100) made to any candidate or campaign committee ... or a political issues committee, the full name, address, ... the date of the contribution, the amount of the contribution, and the employer and occupation of each other contributor. If the contributor is self-employed, the name under which he is doing business shall be listed. (Emphasis added.)

As you state in your letter, the United States Supreme Court has held that, although a state may not limit the amount of contributions toward the discussion of ballot issues, the "integrity of the political system" does justify reporting requirements for such contributions. Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 299-300 (1981)("The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed..."); see also Eu, supra at 231. The Court did not thereby impose specific limits on the type of information a state could require to identify contributors.

Further, in Buckley v. Valeo, 424 U.S. 1 (1976), the Court upheld reporting requirements for contributions and expenditures (even independent expenditures), "identifying three 'sufficiently important' governmental interests: providing the electorate with information as to who supports a candidate and where political funding comes from, deterring corruption and the appearance thereof by 'exposing large contributions and expenditures to the light of publicity,' and gathering data essential to detect violations of contribution limits." Buckley, 424 U.S. at 66-68, quoted in Daggett v. Commission on Governmental Ethics, 172 F.3d 104 (1st Cir. 1999). Under Buckley, a reporting requirement, even for unlimited speech, is constitutional provided the reporting requirement is "narrowly limited to those situations where the information sought has a substantial connection with the governmental interests sought to be advanced." Id. at 81.

The legislature has determined that a person's name, address, occupation and employer are necessary to identify contributors, and "such determinations are 'best left to legislative discretion' and will be deferred to unless 'wholly without rationality.'" See Daggett, supra (quoting Vote Choice Inc. v. DiStephano, 4 F.3d 26 (1st Cir. 1993)). Therefore, KRS 121.180(3)(a) 3. is applicable to political issues committees based on the clear intent of the legislature.

This opinion reflects the Registry's consideration of the specific transactions posed by your letter. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Board Members
Sarah M. Jackson, Executive Director